Commissioner of C. Ex. Vs. Long Life Tools (P) Ltd.

Commissioner of C. Ex. Vs. Long Life Tools (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/41405

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2006

Judge : M T K.C.

Appellant : Commissioner of C. Ex.

Respondent : Long Life Tools (P) Ltd.

Judgement :
2. The respondents are 100% EOUs and as per condition of licence issued to them for warehousing the goods under the provisions of Section 58 of the Customs Act, cost recovery charges are required to be deposited by them. They deposited the cost recovery charges but filed a refund claim for the said charges on the ground that they have not availed the services of the Customs officers. The Dy. Commissioner rejected the refund claim on the ground that the noticee deposited the amount to fulfil one of the conditions of the licence granted for Private Bonded Warehouse under Section 58 of the Customs Act, 1962 and the refund claim filed by the noticee is not covered under any of the provisions of the Customs Act or Rules or Central Excise Act or the Rules, The noticee also did not bring forward any directions of the Govt. for refund of any such amounts. Both the respondents filed appeals before the Commissioner (Appeals), who relying on the abstract from a book and treating it as the instructions issued by the Board, allowed the refund. The department has filed these appeals that no such instruction from the Board is there on which the Commissioner (Appeals) has relied upon. It was pointed out that no appeal lies against the order to the

Commissioner (Appeals) under Section 128 of the Customs Act as the refund is not under the provisions of Customs Act or the Central Excise Act or the rules made thereunder, since the matter relates to the cost recovery charges. Reliance was placed on the decision of the Rajasthan High Court in case of Shree Pipes Ltd. v. Union of India .

2. None appeared for the respondents despite the fact that the appeals were on Board and intimation was also sent to the respondent. But they have not cared to pursue these appeals either by filing any cross-objections or appearing before the Tribunal.

3. I have considered the submissions made on behalf of the Revenue. I find that the original authority rejected the claim of the respondents on the ground that the amount deposited as cost recovery charges were for fulfilling one of the conditions of the licence granted to them for Private Bonded Warehouse under Section 58 of the Customs Act and the refund claim is not covered under the provisions of the Central Excise Rules/Act or the Customs Act or the Rules. The order passed by the Commissioner (Appeals) basing his decision on Para 8.2 of the book of Shri S.M. Bhatnagar is not any instruction of the Board. The refund of cost recovery charges is an administrative function and the respondents should have approached the Commissioner or the Administrative Machinery of the Department for refund of the amount instead of filing the appeal under Section 128 of the Customs Act.

4. In view of this, the orders of the Commissioners (Appeals) are set aside. The respondents are free to approach the Administrative Department for any refund of cost recovery charges. The appeals of the Revenue are accordingly allowed.